

# STATE OF ILLINOIS

## DEPARTMENT OF INSURANCE



IN THE MATTER OF THE  
REVOCATION OF LICENSING  
AUTHORITY OF:

HEARING NO. 4102

Gigliola Gonzales  
8165 South Tripp Ave.  
Chicago, Illinois 60652

### ORDER

I, J. Anthony Clark, Illinois Director of Insurance, hereby certify that I have read the entire Record in this matter and the hereto attached Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer, Morton P. Kamins, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the entire Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made a part hereof.

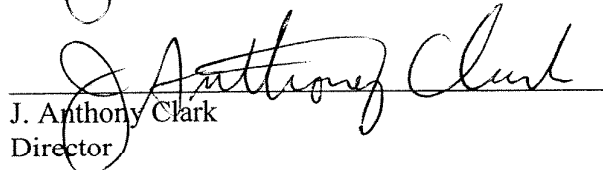
I, J. Anthony Clark, Director of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Article XXIV of the Illinois Insurance Code (215 ILCS 5/401 et seq.) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 et seq.).

This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq.). Further this Order is appealable pursuant to the Illinois Administrative Review Law (735 ILCS 5/3-101 et seq.).

**THEREFORE IT IS HEREBY ORDERED THAT:**

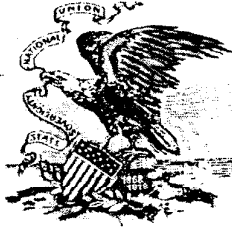
- 1) The Illinois Producer's License of the Respondent, Gigliola Gonzales, is revoked;
- 2) The Respondent, Gigliola Gonzales shall pay the Director of Insurance a civil forfeiture in the sum of \$2,000 within 35 days of the date of this Order; and
- 3) The Respondent, Gigliola Gonzales, pay as costs of this proceeding, within 35 days of the date of this Order, the sum of \$313.50, directly to the Illinois Department of Insurance, Tax and Fiscal Services Section, 320 W. Washington Street, Springfield, Illinois 62767-0001.

**IN WITNESS WHEREOF**, I have hereunto  
subscribed my name and affixed the Official  
Seal of the Department of Insurance in the City  
of Springfield, State of Illinois, this 29<sup>th</sup> day  
of January, A.D., 2004.

  
\_\_\_\_\_  
J. Anthony Clark  
Director

# STATE OF ILLINOIS

## DEPARTMENT OF INSURANCE



IN THE MATTER OF THE  
REVOCATION OF THE LICENSING  
AUTHORITY OF:

HEARING NO. 4102

Gigliola Gonzalez  
8165 South Tripp Ave.  
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### FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes Morton P. Kamins, Hearing Officer, in the above-captioned matter and hereby offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

#### FINDINGS OF FACT

- 1) On September 3, 2003 the Director of Insurance, J. Anthony Clark (Director) issued an Order of Revocation revoking the Illinois Insurance Producer's License of Gigliola Gonzales (Respondent). (Hearing Officer Exhibit # 2a)
- 2) On September 18, 2003 the Illinois Department of Insurance (Department) received a Request for Hearing from the Respondent. (Hearing Officer Exhibit # 2b)
- 3) On September 26, 2003 the Director issued a Notice of Hearing in this matter setting a Hearing date and location of November 6, 2003 at 10:00 a .m. at the Department's Offices in Chicago, Illinois. (Hearing Officer Exhibit # 2)
- 4) On September 26, 2003 Louis Butler filed a Notice of Appearance as Counsel for the Department in this matter. (Hearing Officer Exhibit # 2)
- 5) On September 26, 2003 Morton Kamins was appointed as Hearing Officer in this matter by the Director. (Hearing Officer Exhibit # 1)

- 6) On October 16, 2003 Gigliola Gonzales (Respondent) requested a Continuance in this matter. (Hearing Officer Exhibit # 3)
- 7) On October 17, 2003 the Hearing Officer granted the Respondent's request for Continuance in this matter. (Hearing Officer Exhibit # 4)
- 8) The Hearing in this matter was convened at the Department's Offices in Chicago, Illinois at 10:00 a.m. on December 3, 2003 at which time were present Morton P. Kamins, Hearing Officer; Louis Butler, on behalf of the Department; Wanda Worthy, Richard Nitka and Ronald Masino with the Department.
- 9) The Respondent, Gigliola Gonzales failed to appear.
- 10) The purpose of this proceeding was to determine the Respondent's eligibility to hold an Illinois Insurance Producer's License and to determine whether the Director's Order of Revocation of the Respondent's license should stand.
- 11) Wanda Worthy, Staff Examiner of the Department's Producer Regulatory Unit, testified on direct examination in this matter as follows: (R. 11-47)
  - a) She has been employed with the Department's Producer Regulatory Unit for three years as an investigator;
  - b) She was assigned to investigate the Respondent when the Department received a complaint from American Family Insurance Company that the Respondent had allegedly misappropriated money owed them. She testified that American Family sent the Department a list of consumers that the Respondent collected premiums on and had failed to remit back to the company; (Department Exhibits # 1 and # 2)
  - c) She testified that during her investigation American Family Insurance Company sent her payment receipts that the Respondent gave to these consumers. She was able to determine from these American Family Insurance Company receipts that they matched the consumers on the list the company provided. (See Department Exhibits # 1 and # 3)
  - d) She testified that she was provided a list of some fifty-three (53) consumers from American Family Insurance Company whose premiums were collected by the Respondent and not remitted back to the company. She further testified that she was able to determine that the Respondent owed American Family Insurance Company \$14,731.19 in unremitted premiums;

- e) She testified that she did a "Fiduciary Review" of the Respondent's Premium Fund Trust Account (PFTA) for the period of time of October 2001 through February 2002. She further testified that on numerous occasions the Respondent's own records clearly showed that the Respondent failed to maintain the required funds she received in a fiduciary capacity; (Department Exhibits # 4 and Group Exhibit # 5)
  - f) She testified that during her investigation she discovered that the Respondent had made "unlawful disbursements" from her PFTA. She testified that she made this determination from cancelled checks supplied to her by the Respondent. She further testified that she found many unlawful disbursements from this account and that the Respondent was using money that should have been held in a fiduciary capacity; (Department Exhibit # 6) and
  - g) She testified that during this examination of Respondent's records she discovered that there was not a positive balance in her PFTA check registry. She also testified that her PFTA was improperly labeled. (Department Exhibits # 7 and # 8).
- 12) McGee Court Reporters Services, recorded the testimony taken in this proceeding and charged the Department \$313.50 for the Court Reporter's attendance and one copy of the proceedings.

### CONCLUSIONS OF LAW

Based on the above-listed Findings of Fact and the entire Record in this matter the Hearing Officer offers the following Conclusions of Law to the Director of Insurance.

- 1) Morton P. Kamins was duly appointed Hearing Officer in this matter pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Director of Insurance has jurisdiction over the subject matter and the parties in this proceeding pursuant to Sections 401, 402, 403 and 500-70 of the Illinois Insurance Code (215 ILCS 5/401, 5/402, 5/403 and 5/500-70) and Section 10-65(c) of the Illinois Administrative Procedure Act (5 ILCS 100/10-65(c)).
- 3) The purpose of this proceeding was to determine the Respondent's eligibility to hold an Illinois Insurance Producer's License and to determine whether the Director's Order of Revocation revoking the Respondent's application for said licensing should stand.

- 4) In its Order of Revocation and Notice of Hearing, the Department alleges that the Respondent failed to remit \$14,731.19 in premiums collected from 53 consumers. The Department further alleges that the Respondent failed to maintain lawful requirements in its PFTA in violation of Section 3113 of the Illinois Administrative Code. The Department alleges these violations are grounds for revocation pursuant to Sections 500-115-(a) and 500-70(a)(2) (7) and (8) of the Illinois Insurance Code.

Section 500-115(a) provides, inter alia:

Any money that an insurance producer, limited line producer, temporary insurance producer, business entity, or surplus line producer receives for soliciting, negotiating, effecting, procuring, renewing, continuing, or binding policies of insurance shall be held in a fiduciary capacity and shall not be misappropriated, converted, or improperly withheld. An insurance company that delivers to any insurance producer in this State a policy or contract for insurance pursuant to the application or request of an insurance producer, authorizes the producer to collect or receive on its behalf payment of any premium that is due on the policy or contract for insurance at the time of its issuance or delivery and any premium that becomes due on the policy or contract not more than 90 days thereafter.

Section 500-70(a)(2)(4) and (8) provide, inter alia:

- (a) The director may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with this Section or take any combination of actions, for any one or more of the following causes:
  - (2) violating any insurance laws, or violating any rule, subpoena, or order of the Director or of another state's insurance commissioner;
  - (4) improperly withholding, misappropriating or converting any moneys or properties received in the course doing insurance business;
  - (8) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere;

The evidence presented by the Department in this matter clearly indicates that the Respondent failed to remit \$14,731.19 in premiums to American Family Insurance Company during the period of May 2001 to December 2001. Evidence was introduced that the Respondent had collected premiums on 53 policyholders and that the Respondent failed to remit these premiums back to American Family Insurance. Evidence was also introduced by the Department that the Respondent had given these 53 policyholders receipts for the premiums she had collected. By this improper action of the Respondent in withholding premiums that are required to be maintained in a fiduciary capacity she violated Section 500-115(a) of the Illinois Insurance Code, which is a ground for revocation pursuant to Section 500-70(a)(4) of the Illinois Insurance Code. (Department Exhibits # 1, # 2 and # 3)

The Department presented evidence that during the course of its investigation their investigator examined the Respondent's PFTA and found numerous violations. Evidence was introduced that a "Fiduciary Review" was conducted by the Department investigator and that the Respondent's PFTA clearly showed that the Respondent had failed to maintain the required funds in a fiduciary capacity. The evidence also showed that the Respondent made unlawful disbursements from her PFTA on money that should have been held in a fiduciary capacity. (Department Exhibits # 4, # 5 and # 6) These actions by the Respondent violated 50 Ill. Adm. Code 3113.40(j) and 3113.4(h), which are grounds for revocation pursuant to Section 500-70(a)(4) and (8) of the Illinois Insurance Code. (Department Exhibits # 7 and # 8)

The Respondent did not attend the Hearing and no evidence was introduced on her behalf.

In light of the above, the Hearing Officer concludes that the Director of Insurance properly concluded that the Respondent improperly withheld and misappropriated premiums that are required to be maintained in a fiduciary capacity. The Hearing Officer also concludes that the Director of Insurance properly concluded that the Respondent used fraudulent, coercive, or dishonest practices, and also demonstrated incompetence, untrustworthiness or financial irresponsibility. The Hearing Officer also concludes that the Director of Insurance properly concluded that the Respondent violated various sections of the Illinois Administrative Code. The Hearing Officer concludes that the Director properly and correctly revoked the Respondent's producer's license pursuant to Section 500-70(a)(2)(4) and (8) of the Illinois Insurance Code.

### **RECOMMENDATIONS**

Based upon the above-stated Findings of Fact, Conclusions of Law and the entire Record in this matter, the Hearing Officer offers the following Recommendations to the Director of Insurance.

- 1) That the Respondent's Illinois Insurance Producer's License be revoked;
- 2) That the Respondent be assessed a civil forfeiture in the amount of \$2,000; and

- 3) That the Respondent be assessed the costs of this proceeding.

Date: \_\_\_\_\_

1/22/04



Morton P. Kamins  
Hearing Officer